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67801 7590 11/22/2010 MARTIN D. MOYNIHAN d/b/a PRTSI, INC. P.O. BOX 16446 ARLINGTON, VA 22215				
EXAMINER				
JARRETT, SCOTT L				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/534,136

**Applicant(s)**

MIZRAHI ET AL.

**Examiner**

SCOTT L. JARRETT

**Art Unit**

3624

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,9,12,14-17,19,23,46-56,70-75 and 88-115 is/are pending in the application.
- 4a) Of the above claim(s) 52-56 and 101-112 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9,12,14-17,19,23,46-51,70-75,88-100 and 113-115 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-640)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/25/2010, 8/30/2010, 6/2/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This **Final** Office Action is in response to Applicant's amendment and submissions filed October 4, 2010 and October 25, 2010. Applicant's amendment amended claims 1, 9, 12, 14, 15-17, 19, 46-56, 70-75, 88-99 and 113-115. Currently claims 1, 9, 12, 14, 15-17, 19, 23, 46-51, 70-75, 88-115 are pending with claims 52-56 and 101-112 being previously withdrawn and claims 2-8, 10-11, 13, 18, 20-22, 24-45, 57-69 and 76-87 being previously canceled.

### ***Response to Amendment***

2. The 35 U.S.C. 101 rejection in the previous office action is *not* withdrawn in response to Applicant's amendments to the claims.

The Objection to the Title in the previous office action is withdrawn in response to Applicant's amendment to the title.

The 35 U.S.C. 112(2) rejection of claims 50, 52 and 73 are withdrawn in response to Applicant's amendments to the claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

It is noted that applicant did not challenge the officially cited facts in the previous office action, therefor those facts as recited are herein after prior art. Specifically it has been established that it is old and well known to automatically generated survey

questions; that a delay is inherent in transferring data (questions in the instant application.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1, 9, 12, 14, 15-17, 19, 23, 46-51, 70-75, 88-100 and 113-115 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed s October 4, 2010 have been fully considered but they are not persuasive.

In response to Applicant's argument that the prior art of record fails to teach or suggest: one or more open questions and associated answers (Paragraphs 1-2, Page 21); transferring respondent answers to other respondents (Last Paragraph, Page 23); collecting qualitative answers to the transferred questions (Page 21) and/or adjusting the survey progression (Page 21) as claimed the examiner respectfully disagrees.

The phrase open question has been given its broadest reasonable interpretation in light of the specification and knowledge of those skilled in the art at the time of the invention. Specifically open questions encompasses any/all questions, questionnaires, surveys, polls or the like wherein participants (respondents) are allowed to answer the question in a manner they wish, make open choices, respond to open ended questions, respond to closed questions with open ended responses, use of free form text, no explicit question, free style comments/suggestions or the like.

Applicant is encouraged to add language to the claim to clarify what the intended scope of the phrase open question is.

Brock teaches a system and method of conduction on survey session by a means of a computerized survey system adapted to communicate with a plurality of respondents by means of respondent stations comprising: providing a plurality of questions to respondent stations, at least some of the questions being provided to a plurality of the respondent stations (Figure 1, Elements 10a-10n) wherein at least one of the plurality of questions is an open question (Figure 21 – "What did you think about specific elements of the website?"; Figure 11, Element 138; Figure 12, Element 260; Figure 19, Element 358; Claim 40 – emphasis added).

- Column 13, 32-40: Lines Beneath window 266 is window 268 which lists the respondents participating in the particular focus study, the number of hits per respondent (that is, the number of pages viewed), the total time spent by the respondents, the total "like" votes provided by the respondents, the total "dislikes" provided by the respondents, total "frustrated" **comments provided by the respondents**, the **total "questions" provided by the respondents** and the total votes provided by a respondent in all categories.
- Column 13, lines 40-42: Beneath window 268 is window 270 which provides a comprehensive **listing of the comments** and associated votes provided by the **focus group**.

- Claim 40: The method of claim 35, further comprising the steps of: using at least one of the rating signals and **comment data** to identify specific issues regarding the Web page; **generating a questionnaire related to the specific issues; distributing the questionnaire** to a large group of remote respondents; and **receiving responses to the questionnaire** from at least a portion of the large group of respondents.

Brock further teaches a computerized survey system and method comprising: transferring (providing, sharing, transmitting, displaying, etc.) at least some of the answers to the respondent stations of respondents other than those who generated the answers (Column 14, Lines 22-28; Figure 15; e.g. respondents voting on other respondents comments/responses – Column 13, Lines 33-55; Column 14, Lines 7-15; Figure 11, Element 138; Figure 12, Element 260; Figure 13, Elements 268, 270; Claims 29, 32).

Brock further teaches a computerized survey system and method further comprising adjusting the progress of the survey by adjusting at least one question responsive to the qualitative responses or answers (Column 4, Lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29).

- Claim 40: The method of claim 35, further comprising the steps of: **using at least one of the rating signals and comment data to identify specific issues regarding the Web page; generating a questionnaire related to the specific issues; distributing the questionnaire** to a large

group of remote respondents; and receiving responses to the questionnaire from at least a portion of the large group of respondents.

Davis teaches a system and method for conducting a survey session using a computerized survey system comprising:

- providing a plurality of questions to respondent stations at least some of the questions being provided to a plurality of the respondent stations wherein at least one of the questions is an open question:

- Davis teaches it is old and well known to ask questions as part of a computerized system for conducting online focus groups (Column 1, lines 62-68: In NFO's on-line focus groups, when a question is asked of the group, all of the respondents type their responses simultaneously. **On-line focus groups may begin with a simple series of text-based questions** or they may jump right in to a technical discussion.)
- Davis further teaches that it is old, well known and desirable to be able to adjust the progression of a survey, during a session, by adding new questions (Column 2, Lines 6-16: "In this way, **questions can be added in real time to further probe a particular response.** ").

- adjusting the progression of the survey session responsive to the generated summary further comprising adjusting at least one question responsive to the qualitative responses or answers (Column 6, Lines 60-68: "However, as with traditional focus groups, by **monitoring the chat messages** provided by the respondents participating in an **on-line focus group**, a client **may alter or modify the direction of the focus**

**group or suggest additional questions and/or information to be provided to the respondent.** This is accomplished by inputting a client chat message, which is directed to the focus group moderator.”, emphasis added).

- transferring at least some of the answers to respondent stations of respondents (Figure 7, Elements 130a-130n; Column 4, Lines 57-68) other than those who generated the answers during the survey session (chat/instant messages - inherently being transferred (shared, published, broadcast) to all of the other users in the chat session/room; Column 2, Lines 34-68; Column 5, Lines 45-68; Column 6, Lines 1-9, 41-45; Column 8, Lines 59-65; Figure 5, Moderator interface; Figure 8 – message, username columns).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., adjusting the progression of the survey using new questions (Paragraphs 2-3, Page 20) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that the prior art of record fails to teach of suggestions sub-groups (Last Two Paragraphs, Page 23) as claimed the examiner respectfully disagrees.



Brock teaches a computerized survey system and method system and method grouping respondents into groups (e.g. grouping by focus group; Column 14, Lines 7-21; Figure 14) and wherein respondents comment (provide feedback, vote, comment on, etc.) other respondents answers/comments/responses (Figure 13, Elements 268, 270; Figure 11, Element 128; Figure 12, Element 250; Claims 29, 32; Column 13, Lines 25-42; Column 14, Lines 7-20, 55-62)

Davis teaches a computerized survey system and method wherein the respondents are divided by the system into sub-groups (chat sessions, different focus-groups, etc.) and wherein the transferring of responses/answers comprises transferring each answer to respondent stations in the same sub-group as the respondent generating the answer (e.g. displaying of chat messages only within the specified chat room; if this was not the case Davis would be inoperable as all of the various chat messages would be in a single large chat room; Figure 1, Element 372; Figures 4, 5 - Elements 240; emphasis added).

- Column 2, Lines 20-30: "Accordingly, there is a need for the system and method of conducting **focus groups using remotely located participants**, including one or more moderators, one or more clients and one or more respondents, who are all physically remote from each other. In order to do this, such a system must allow for the implementation of **at least two separate chat discussions to be conducted simultaneously between the three classes of focus group participants** to provide an electronic analog to a one-way mirror segregating clients from

respondents. In addition, such a system must **allow and prohibit participation in the different chat discussions based on the class of the participant.**

In response to Applicant's argument that the prior art of record fails to teach of suggestion providing at least one question in response to statistics (stats, summary, mathematical, etc.; e.g. vote counts, total time spent, etc.) on respondent answers/responses collected (Last Two Paragraphs, Page 24), the examiner respectfully disagrees.

Brock teaches a computerized survey system and method utilizing answer/response statistics to generate one or more questions (Column 5, Lines 55-68; Column 13, lines 20-40; Figures 13-16).

In response to Applicant's arguments that the prior art of record fails to teach of suggest automatically generating at least one question wherein the automation is part of a complex adaptive question generation scheme, the examiner respectfully disagrees.

Initially it is noted that the claim merely recites that questions are automatically generated by the system.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., complex adaptive question generation scheme, questions based on respondent response statistics, Page 25) are not recited in the rejected claim(s). Although the

claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's Applicant(s) attempt at traversing the Official Notice findings as stated in the previous Office Action (Second to Last Paragraph, Page 25) is inadequate. Adequate traversal is a two step process. First, Applicant(s) must state their traversal on the record. Second and in accordance with 37 C.F.R. 1.111(b) which requires Applicant(s) to specifically point out the supposed errors in the Office Action, Applicant(s) must state why the Official Notice statement(s) are not to be considered common knowledge or well known in the art.

In this application, while Applicant(s) have clearly met step (1), Applicant(s) have failed step (2) since they have failed to argue why the Official Notice statement(s) are not to be considered common knowledge or well known in the art. Because Applicant(s)' traversal is inadequate, the Official Notice statement(s) are taken to be admitted as prior art. See MPEP 2144.03.

In response to Applicant's argument that the prior art of record fails to teach of suggest the specific size limitations/constraints of their focus group, the examiner agrees. However as noted in the previous office action, the specific size limits/constraints merely recite on-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The

recited method steps would be performed the same regardless of the specific size constraints/limits to the focus group. Further, the structural elements remain the same regardless of the specific size constraints/limits to the focus group. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

In response to Applicant's argument that the prior art of record fails to teach of suggest generating wording for at least one question responsive to answers received from respondents (Bullet 4, Page 27) the examiner respectfully disagrees.

Brock teaches generating the wording for at least one question response to the answers received from respondent stations (Column 4, Lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Claim 40).

Davis teaches generating the wording for at least one question response to the answers received from respondent stations (Column 6, Lines 60-68: "However, as with traditional focus groups, by **monitoring the chat messages** provided by the respondents participating in an **on-line focus group**, a client **may alter or modify the direction of the focus group or suggest additional questions and/or information to be provided to the respondent**. This is accomplished by inputting a client chat message, which is directed to the focus group moderator.", emphasis added)

In response to Applicant's argument that the prior art of record fails to teach or suggest comparing a current state of the survey to the goal (Bullet 2, Page 29), the examiner respectfully disagrees.

Martino teaches a system and method comparing a current state of the survey to the goal (Column 21, Lines 27-49).

In response to Applicant's argument that the prior art of record fails to teach or suggest grouping similar answers together and stating for each answer the percentage of respondents providing the answer (Paragraph 1-2, Page 30) the examiner respectfully disagrees.

Li et al. teach generating a summary report comprising grouping similar answers together and stating the percentage for each answer (Column 2, Paragraph 4, Page 444; Table 6, Figure 3).

In response to Applicant's argument that the prior art of record fails to teach of suggest the use of text mining to analyze the answers/responses (Paragraph 1, Page 31), the examiner respectfully disagrees.

Lit et al. teaches using text mining methods to analyze the answers/responses (Abstract; Figure 1, Tables 2-4, 6).

In response to Applicant's arguments that the prior art of record fails to teach of suggest stating dominant words (Paragraph 2, Page 31) the examiner respectfully disagrees.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., changing/adjusting the content (graphic, audio or video files) presented in the focus group; Paragraphs 1-2, Page 32) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that the prior art of record fails to teach of suggest skipping questions (Last Paragraph, Page 32), the examiner respectfully disagrees.

Nanos et al. teach changing a preplanned survey wherein changing a preplanned survey comprises skipping at one question in a question order of the preplanned survey plan (Column 8, Lines 45-54; Column 9, Lines 65-68; Column 10, Lines 1-15).

In response to Applicant's argument that the prior art of record fails to teach of suggest changing a preplanned survey (Paragraph 1, Page 33), the examiner respectfully disagrees.

Nanos et al. teach adjusting the survey progression comprises changing a preplanned survey plan (Abstract; Column 10, Lines 1-22; Column 11, Lines 31-40, 60-64; Figure 5).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is noted that the features argued to not exist the prior art of record, especially Brock and Davis) are clearly found in Applicant's own work, namely NetOncourse MI-Live product - as detailed in the 35 U.S.C. 102(b) rejection below.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1, 9, 12, 14, 15-17, 19, 23, 46-56, 70-75, 88-100 and 113-115 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding Claim 1, claim 1 is directed to a method of conducting a survey by means of a computerized survey system however none of the system elements are enumerated in Claim 1 or its dependents. Therefore the system of claim 1 can be interpreted to be directed to software per se and therefore is not eligible for a patent wherein the software is not embodied on a computer readable medium that when executed by a computer/processors performs the method steps.

It is also noted that the mere recitation of a computerized system (supposedly including a machine) in the preamble in a manner such that the machine fails to patentably limit the scope of the claim does not make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion Ex parte Langemyr et al. (Appeal 2008-1495), <http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf>.



Claims 1, 9, 12, 14-17,19,23, 46-51, 70-75, 88-100 and 113-115 are not tied to a particular machine or apparatus nor do they transform a particular article into a different state or thing, thereby failing the machine-or-transformation test; therefore, claims 1, 9, 12, 14-17,19,23, 46-51, 70-75, 88-100 and 113-115 are non-statutory under § 101.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 9, 12, 14, 15-17, 19, 2346-56, 70-75, 88-100 and 113-115 rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention- NetOnCourse, Inc. MI-Live product (system and method) as evidenced by at least the following references:

- I. NetOnCourse, Inc. MI-Live Take the Pulse Of Your Market – Product Overview September 2001 (Marked up copy, provided with this office action), herein reference A;
- II. MI-Live Product Demonstration, September 2001, herein after reference B;

Initially it is noted that Application No. 10/534136 was filed on February 22, 2006 with Foreign Priority being claimed to PCT IL/0300923 filed November 6, 2003 which claims priority to provisional application 60423328 filed November 7, 2002. It is noted that the applied references clearly teach the sale and public use of the MI-Live product no later than September, 2001 more than 13 months prior to the current effective filing date of the instant application.

Regarding Claims 1 and 19 NetOncourse teaches a system and method of conducting a survey by means of a computerized survey system adapted to communicate with a plurality of respondents by means of respondent stations (e.g. browsers) comprising (reference A: Pages 6-11; reference B: Pages 6-7):

- providing a plurality of questions to respondent stations (browsers), at least some of the questions being provided to a plurality of respondent stations, wherein at least one of the plurality of questions is an open question (reference A: Title, Bullet 4, Page 2; Top Left Bullet, First Bullet, Page 4; Bullet 2, Page 5; Bullet 3, Page 9; Page 10; reference B: Pages 6-7);

- collecting answers to the questions from the respondent stations (reference A: Numbers 2, 3, Page 7; Pages 10, 11; Bullet 3, Page 5; MI-Live Dashboard, Page 8; Bullets 5-8, Page 9; Page 10 – Vote, Sample Columns; Page 11; reference B: Page 6, Bullets 1-4, Page 7);

- transferring (sharing) at least some of the answers to respondent stations of respondents other than those who generated the answers, during the survey (e.g. enabling respondents to respond/provide feedback on other respondents questions; sharing) answers amongst participants (reference A: Number 3, Page 7 – “The respondent may also choose to respond by agreeing with someone else’s answer.”; reference B: Page 3; Bullets3-4, Page 7);

- collecting from the respondent stations responses to the transferred answers, at least some of the responses being qualitative (reference A: Number 3, Page 7; reference B: Page 3; Bullets3-4, Page 7);

- generating a summary report in the computerized survey system which is at least partially based on qualitative responses OR answers collected from the respondent stations (reference A: Bullet 3, Page 5; MI-Live Dashboard, Page 8; Bullets 5-8, Page 9; Page 10 – Vote, Sample Columns; Page 11; reference B: MI-Live Dashboard Page 4); and

- adjusting progression of the survey session by the computerized survey system responsive to the generated summary (report) during the survey session (dynamic, real-time; reference A: Page 2, First & Last Bullets; Number 4, Page 6) the adjusting comprising adjusting at least one question responsive to the qualitative responses or answers (reference A: Bullet 7, Page 9 – “Generate dynamic surveys and modify them on the fly!”; Bullets 2, 7, Page 12).

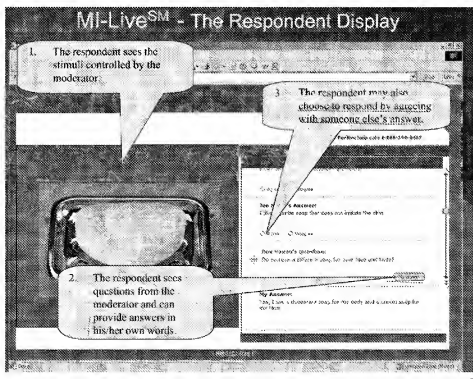


Figure 1: Reference A, Page 7

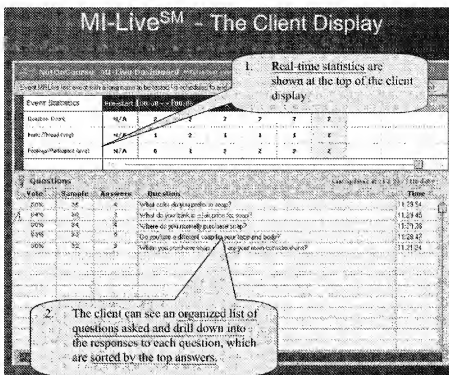


Figure 2: Reference A, Page 8

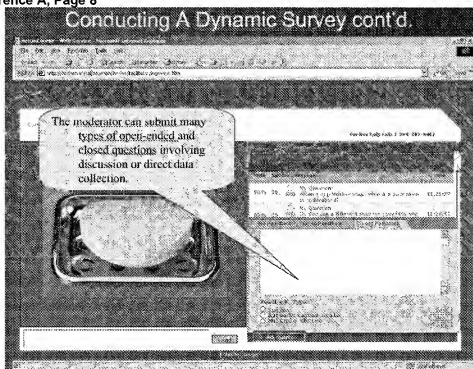


Figure 3: Reference A, Page 10

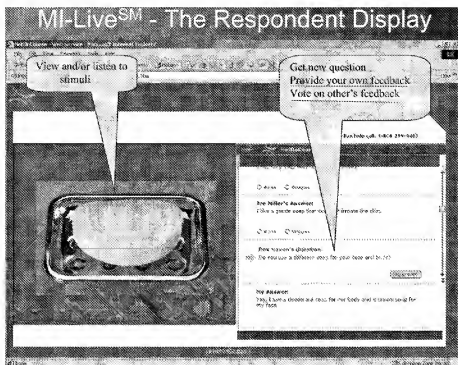


Figure 4: Reference B, Page 3

Regarding Claim 9 NetOncourse teaches a system and method wherein at least one of the questions is provided after transferring at least some of the answers to respondent stations of respondents other than those who generated the answers (reference A: Number 3, Page 7 – “The respondent may also choose to respond by agreeing with someone else’s answer.”; reference B: Page 3; Bullets 3-4, Page 7; Bullet 7, Page 9 – “Generate dynamic surveys and modify them on the fly!”; Bullets 2, 7, Page 1).

Regarding Claim 12 NetOncourse teaches a system and method wherein the respondents are divided into sub-groups and wherein transferring answers comprises transferring each answer to respondent stations of respondents in the same sub-group

(e.g. same survey, same moderator, etc.; reference A: Number 3, Page 7; Bullet 4, Page 9; reference B: Page 3; Bullets 3-4, Page 7; Bullet 7, Page 9; Bullets 2, 7, Page 1).

Regarding Claim 14 NetOncourse teaches a system and method wherein at least one of the provided questions is generated by the system responsive to statistics on the answers collected from the plurality of respondents (reference A: Bullet 3, Page 5; MI-Live Dashboard, Page 8; Bullets 3, 5-8, Page 9; Pages 10-11; Title, Bullet 4, Page 2; Top Left Bullet, First Bullet, Page 4; Bullet 2, Page 5; Bullet 3, Page 9; reference B: MI-Live Dashboard Page 4; reference A: Page 10).

Regarding Claim 16 and 17 NetOncourse teaches a system and method wherein the transferring of answers comprising transferring answers from at least one of the respondent stations to a group of respondent stations which changes during the survey for different answers of the respondents based at least in part of the content of the answers (reference A: Number 3, Page 7; reference B: Page 3; Bullets 3-4, Page 7).

Regarding Claim 23 NetOncourse teaches a system and method wherein at least some of the questions include closed questions (reference A: Bullet 3, Page 9; Page 10).

Regarding Claim 46 NetOncourse teaches a system and method further comprising:

- a question provided adapted to provide a question to a plurality of respondent stations (reference A: Pages 6, 7, 10);
- collecting answers using an answer input unit adapted to receive answers from the respondent stations (reference A: Pages 6, 7, 10); and
- generating wording from at least one question responsive to answers received from the respondent stations (reference A: Bullet 7, Page 9; Bullets 2, 7, Page 12).

Regarding Claim 48 NetOncourse teaches a system and method wherein the answer input unit receives from the respondent stations ratings of answers and using the ratings (e.g. votes, feedback) in generating at least one question (reference A: Bullet 7, Page 9; Bullets 2, 7, Page 12; reference B: Pages 3, 7).

Regarding Claim 49 NetOncourse teaches a system and method wherein at least one question is an open ended question (reference A: Title, Bullet 4, Page 2; Top Left Bullet, First Bullet, Page 4; Bullet 2, Page 5; Bullet 3, Page 9; Page 10).

Regarding Claim 51 NetOncourse teaches a system and method wherein the question provider provides at least one question generated by the system during a same survey session in which the answers used in generating the question were received (reference A: Number 3, Page 7; reference B: Pages 3, 7).



Regarding Claim 70 NetOncourse teaches a system and method further comprising statistically analyzing the collected answers to a first/second questions (reference A: Bullet 3, Page 5; MI-Live Dashboard, Page 8; Bullets 5-8, Page 9; Page 10 – Vote, Sample Columns; Page 11; reference B: MI-Live Dashboard Page 4).

Regarding Claim 71 NetOncourse teaches a system and method wherein the a second is an open question is provided to respondent stations (reference A: Title, Bullet 4, Page 2; Top Left Bullet, First Bullet, Page 4; Bullet 2, Page 5; Bullet 3, Page 9; Page 10).

Regarding Claim 72 NetOncourse teaches a system and method further comprising requesting to rate (rank, score, vote, provide feedback, etc.) on one or more explanations (answers; reference B: Pages 3, 7).

Regarding Claim 88 NetOncourse teaches a system and method wherein the summary (report) is generated in real-time (reference A: Page 2, First & Last Bullets; Number 4, Page 6; Bullet 3, Page 5; MI-Live Dashboard, Page 8; reference B: Page 4).

Regarding Claim 89 NetOncourse teaches a system and method further comprising a statistical report (reference A: Page 2, First & Last Bullets; Number 4, Page 6; Bullet 3, Page 5; MI-Live Dashboard, Page 8; reference B: Page 4).

Regarding Claim 90 NetOncourse teaches a system and method wherein the generated summary (report) is presented to a moderator during the survey session (moderator display/view; reference A: Page 2, First & Last Bullets; Numbers 3, 4, Page 6; Bullet 3, Page 5; MI-Live Dashboard, Page 8; Page 10; reference B: Pages 4, 8).

Regarding Claim 91 NetOncourse teaches a system and method wherein the summary report further comprising grouping similar answers together and stating for each answer the percentage of respondents presenting the answer (reference A: Vote Column, Page 10; Page 11).

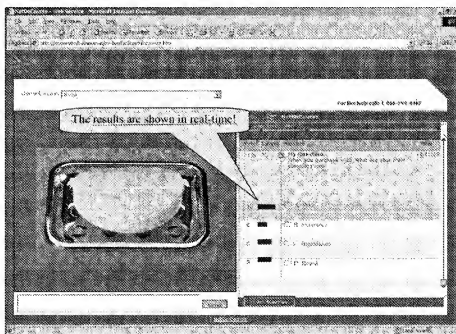


Figure 5: Reference A, Page 11

Regarding Claim 96 NetOncourse teaches a system and method further comprising using the summary report to generate or modify one or more questions provided to the respondent stations (reference A: Bullet 7, Page 9 – “Generate dynamic surveys and modify them on the fly!”; Bullets 2, 7, Page 12).

Regarding Claim 97 NetOncourse teaches a system and method further comprising changing a preplanned survey plan (reference A: Bullet 7, Page 9 – “Generate dynamic surveys and modify them on the fly!”; Bullets 2, 7, Page 12).

Regarding Claim 115 NetOncourse teaches a system and method wherein the respondents comprise a focus group (reference A: Page 5; reference B: Page 5).

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: please provide information on the MI-Live product – specifically product brochures, user's guides, help manuals, presentations, articles, product road-maps, press-releases or the like which document the applicant's public use or sale of an online survey system/method. Further examiner wishes to establish the first date upon which the MI-Live system/method was first made publicly available or for sale.

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 9,12, 14-17,19, 23, 46, 47, 49-51,70-72,88-90, 95, 96, 100 and 113-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock U.S. Patent No. 7,181696 in view of Davis, U.S. Patent No. 6,256,663.

Regarding Claims 1, 19 and 46 Brock teaches a system and method of conduction on survey session by a means of a computerized survey system adapted to communicate with a plurality of respondents by means of respondent stations comprising:

- providing a plurality of questions to respondent stations, at least some of the questions being provided to a plurality of the respondent stations (Figure 1, Elements 10a-10n) wherein at least one of the plurality of questions is an open question (Figure 21 – “What did you think about specific elements of the website?”; Figure 11, Element 138; Figure 12, Element 260; Figure 19, Element 358; Claim 40 – emphasis added).

- Column 13, 32-40: Lines Beneath window 266 is window 268 which lists the respondents participating in the particular focus study, the number of hits per respondent (that is, the number of pages viewed), the total time spent by the respondents, the total "like" votes provided by the

respondents, the total "dislikes" provided by the respondents, total "frustrated" **comments provided by the respondents**, the **total "questions" provided by the respondents** and the total votes provided by a respondent in all categories.

- Column 13, lines 40-42: Beneath window 268 is window 270 which provides a comprehensive **listing of the comments** and associated votes provided by the **focus group**.
- Claim 40: The method of claim 35, further comprising the steps of: using at least one of the rating signals and **comment data** to identify specific issues regarding the Web page; **generating a questionnaire related to the specific issues; distributing the questionnaire** to a large group of remote respondents; and **receiving responses to the questionnaire** from at least a portion of the large group of respondents.
  - collecting answers to the questions from the respondents (Column 4, Lines 11-37; Column 5, Lines 6-53; Column 13, lines 15-43; Figure 6);
  - collecting responses to the transferred questions, at least some of the responses be qualitative (Column 4, Lines 11-37; Column 5, Lines 6-53; Column 13, lines 15-43; Figure 6);
  - transferring (providing, sharing, transmitting, displaying, etc.) at least some of the answers to the respondent stations of respondents other than those who generated the answers (Column 14, Lines 22-28; Figure 15; e.g. respondents voting on other respondents comments/responses – Column 13, Lines 33-55; Column 14, Lines 7-15;

Figure 11, Element 138; Figure 12, Element 260; Figure 13, Elements 268, 270; Claims 29, 32).

- providing a (summary) report at least partially based on qualitative responses *or* answers collected from the respondents (Column 3, Lines 39-68; Column 4, Lines 49-56; Column 5, Lines 55-68; Column 9, Lines 1-7; Figures 9, 13, 14, 18);

- adjusting the progression (flow, questions, timing, answers, direction, path, route, respondents, etc.) of the survey session response to the (summary) report provided, during the survey session (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

- adjusting the progress of the survey by adjusting at least one question responsive to the qualitative responses or answers (Column 4, Lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29).

- Claim 40: The method of claim 35, further comprising the steps of: **using at least one of the rating signals and comment data to identify specific issues regarding the Web page; generating a questionnaire related to the specific issues**; distributing the questionnaire to a large group of remote respondents; and receiving responses to the questionnaire from at least a portion of the large group of respondents.

Brock further teaches Regarding generating wording for at least one question responsive to the answers received from the respondents (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Brock does not expressly teach transferring (providing, savings, displaying, sharing, publishing, etc.) at least some of the answers to respondents other than those who generated the answers, during the survey session a Claimed.

Davis teaches a system and method for conducting a survey session comprising transferring (providing, savings, displaying, sharing, publishing, etc.) at least some of the answers to respondents other than those who generated the answers, during the survey session (Chat, IM; Column 2, Lines 34-50; Column 5, Lines 59-68; Column 8, Lines 59-65; Figures 5, 7) in an analogous art of conducting surveys.

More generally Davis teaches a system and method for conducting a survey session using a computerized survey system comprising:

- providing a plurality of questions to respondent stations at least some of the questions being provided to a plurality of the respondent stations wherein at least one of the questions is an open question:

- Davis teaches it is old and well known to ask questions as part of a computerized system for conducting online focus groups (Column 1, lines 62-68: In NFO's on-line focus groups, when a question is asked of the group, all of the respondents type their responses simultaneously. On-line **focus groups may begin with a simple series of text-based questions** or they may jump right in to a technical discussion.)

- Davis further teaches that it is old, well known and desirable to be able to adjust the progression of a survey, during a session, by adding new questions (Column 2, Lines 6-16: "In this way, **questions can be added in real time to further probe a particular response.** ").
- collecting answers from respondents (Column 2, Lines 10-30; Column 6, Lines 60-68; Column 7, lines 30-38);
- adjusting the progression of the survey session responsive to the generated summary further comprising adjusting at least one question responsive to the qualitative responses or answers (Column 6, Lines 60-68: "However, as with traditional focus groups, by **monitoring the chat messages** provided by the respondents participating in an **on-line focus group**, a client **may alter or modify the direction of the focus group or suggest additional questions and/or information to be provided to the respondent.** This is accomplished by inputting a client chat message, which is directed to the focus group moderator.", emphasis added).
- transferring at least some of the answers to respondent stations of respondents (Figure 7, Elements 130a-130n; Column 4, Lines 57-68) other than those who generated the answers during the survey session (chat/instant messages - inherently being transferred (shared, published, broadcast) to all of the other users in the chat session/room; Column 2, Lines 34-68; Column 5, Lines 45-68; Column 6, Lines 1-9, 41-45; Column 8, Lines 59-65; Figure 5, Moderator interface; Figure 8 – message, username columns).



It would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by Brock would have benefited from transferring (providing, savings, displaying, sharing, publishing, etc.) at least some of the answers to respondents other than those who generated the answers, during the survey session in view of the teachings of Davis, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 9 Brock does not expressly teach transferring answers to respondents as discussed above.

Davis teaches a system and method wherein at least one of the questions provided is after transferring at least some of the answers to respondents other than those who generated the answers (Column 2, Lines 34-50; Column 5, Lines 59-68; Column 8, Lines 59-65; Figures 5, 7).

Regarding Claim 12 Brock does not expressly teach transferring the answers to respondents, as discussed above, or that the respondents are divided into sub-groups as claimed.

Davis teaches a survey sessions system and method wherein respondents are divided into sub-groups (groups, segments, locations, clusters, etc.; Column 2, Lines 34-50; Column 5, Lines 59-68; Column 8, Lines 59-65; Figures 5, 7) and wherein transferring the answers comprises transferring each answer to respondents in the same sub-group as the responded who generated the answer teach a system and method wherein the respondents are divided into sub-groups (groups, segments, locations, clusters, etc.) and wherein transferring the answers comprises transferring each answer to respondents in the same sub-group as the responded who generated the answer (Column 2, Lines 34-50; Column 5, Lines 59-68; Column 8, Lines 59-65; Figures 5, 7).

Regarding Claim 14 Brock teaches a system and method wherein at least one of the provided questions is generated responsive to statistics (data, metrics, etc.) on the answers collected from a plurality of respondents (Column 5, Lines 55-68; Column 13, lines 20-40; Figures 13-16).

Regarding Claim 15 Brock teaches a system and method wherein at least one question is generated (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Brock does not expressly teach that one of the questions is generated automatically.

It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of generating a question gives you just what you would expect from the manual step as shown in Brock. In other words there is no enhancement found in the claimed step. The claimed automated step only provides automating the manual activity. The end result is the same as compared to the manual method. A computer can simply iterate the steps faster. The result is the same.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the generation of at least one question because this would speed up the process of matching policies with customers, which is purely known, and an expected result from automation of what is known in the art.

Regarding Claim 16 Brock does not expressly teach transferring answers to respondents as discussed above.

Davis teaches a system and method wherein transferring the answers comprises transferring answers from at least one of the respondents to a group of respondents which changes during the survey for different answers of the respondents (Column 2, Lines 34-50; Column 5, Lines 59-68; Column 8, Lines 59-65; Figures 5, 7).

Regarding Claim 17 Davis does not teach grouping respondents as claimed.

Davis teaches a system and method wherein the group of respondents receives the answers changes at least partially according to the content of the answers (Column 2, Lines 34-50; Column 5, Lines 59-68; Column 8, Lines 59-65; Figures 5, 7).

Regarding Claim 23 Brock teaches a system and method wherein at least some of the provided questions are closed questions (Figure 11, Element 128; Figure 2, Element 360; Figure 12, Element 258).

Regarding Claim 47 Brock teaches a system and method further comprising selecting from a plurality of answers given to an open question (Figure 12, Element 260, Figure 11, Element 250) (several answers to be used in a closed version of the open question – merely recites the intended use of the answers).

Regarding Claim 49 Brock teaches a system and method wherein the system generates at least one open question (Figure 12, Element 260, Figure 11, Element 25;

Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Regarding Claim 50 Brock teaches does not expressly teach a system and method wherein the at least one question asks for the reason of a statistical distribution of answers to one or more questions.

Brock does not expressly teach the specific data (question) recited in claim 50 (at least one question asks for the reason of a statistical distribution of answers to one or more questions); however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *MPEP* 2106.

Regarding Claim 51 Brock teaches a system and method further comprising generating at least one question during the same survey session in which the answers used in generating the question were received (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Regarding Claims 70 and 72 Brock teaches a system and method further comprising:

- providing during a survey session, a first question to a first group of a plurality of respondents (Column 3, lines 10-58; Column4, Lines 11-37; Column 5, lines 6-53);
- statistically (mathematically) analyzing the collected answers to the first question (Column 5, lines 55-68; Column 13, lines 20-40; Figures 13-16);
- providing, during the survey session, a second a question to a plurality of respondents (Column 3, lines 10-58; Column4, Lines 11-37; Column 5, lines 6-53);
- collecting and (statistical) tabulating the answers to the second questions Column 5, lines 55-68; Column 13, lines 20-40; Figures 13-16).

Brock does not expressly teach the specific data (question) recited in claim 70 (a question on the reasons to a statistical distribution of the collected answers to the first question); however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 71 Brock teaches a system and method wherein the second question comprises an open question (Figure 12, Element 260; Figure 11, Element 250).

Regarding Claim 88 Brock teaches system and method wherein the (summary) report is provided in real-time (Column 5, lines 55-65; Column 3, lines 58-65; Figure 13).

Regarding Claim 89 Brock teaches a system and method wherein the (summary) report comprises a statistical report (Column 5, Lines 55-68; Column 13, lines 20-40; Figures 13-16).

Regarding Claim 90 Brock teaches a system and method further comprising displaying the (summary) report to a moderator of the survey, during the survey session (Column 5, lines 55-65; Column 3, lines 58-65; Figure 13).

Regarding Claim 95 Brock does not expressly teach transferring respondent answers, as discussed above.

Davis teaches transferring respondent answers, as discussed above, but is silent as to whether or not at least one answer is delayed relative to the time the answer was received.

Official notice is taken that a delay, although potentially small, is inherent in any transferring (publishing, forwarding, displaying, etc.) wherein it is nearly impossible to simultaneously receive and answer and display it without some delay.

Further it is noted that whether or not there is a delay merely represents non-functional descriptive material wherein the method steps remain the same regardless of a delay or lack thereof in transferring respondent answers.

It would have been obvious to one skilled in the art at the time of the invention that the survey system and method as taught by the combination of Brock and Davis would have inherently had a delay in transferring at least one answer in view of the teachings of official notice.

Regarding Claims 96 and 100 Brock teaches a system and method wherein adjusting the survey progression further comprises using the (summary) report to generate or modify one or more questions provided to the respondents (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Regarding Claims 113 and 114 Brock and Davis are silent on the specific size limitations/constraints of the survey system however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps



recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 115 Brock teaches a system and method wherein the survey comprises a focus group (Abstract; Column 2, Lines 24).

10. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brock U.S. Patent No. 7,181,696 in view of Davis, U.S. Patent No. 6,256,663 as applied to claims 1, 19, and 46 above and further in view of Bates et al., U.S. Patent No. 6,807,566

Regarding Claim 48 neither Brock nor Davis expressly teach receiving respondent ratings of answers as claimed.

Bates et al. teach a system and method further comprising receiving respondent ratings of the answers and utilizing the ratings in generating at least one question (message/feedback rating; Abstract; Figure 2, Elements 202, 206; Figure 3; Column 6, Lines 10-68).

It would have been obvious to one skilled in the art at the time of the invention the survey session system and method as taught by the combination of Brock and Davis would have benefited from rating respondents answers (feedback, comments, etc.) in view of the teachings of Bates et al., since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

11. Claims 73-75 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock U.S. Patent No. 7,181,696 in view of Davis, U.S. Patent No. 6,256,663 as applied to claims 1, 19, and 46 above, and further in view of Martino et al, U.S. Patent No. 6, 778,807.

Regarding Claim 73 Brock and Davis teach a survey session method and system comprising transferring at least some of the answers to respondents other than those who generated the answers, as discussed above.

While setting goals for surveys (e.g. population size, confidence level, etc.) is old and very well known neither Brock nor Davis expressly teach setting a survey goal as claimed.

Martino et al. teach a system and method for conducting a survey session comprising (Column 21, Lines 27-49):

- setting a survey goal on a statistic (metric) to be achieved by the survey, prior to providing a plurality of questions;
- comparing a current state of the survey to the goal; and
- controlling the providing of the questions or transferring of the answers response to the comparison.

It would have been obvious to one skilled in the art at the time of the invention that the survey system and method as taught by the combination of Brock and Davis would have benefited from controlling a survey session based on a survey goal in view of the teachings of Martino et al., since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 74 Martino et al. teach a system and method wherein controlling comprising determining a number of respondents to receive an answer (question; Column 21, lines 27-49).

Regarding Claim 75 Brock does not expressly teach transferring answers to respondents as claimed, and as discussed above.

Davis teaches a system and method wherein transferring comprising transferring to fewer than all the respondents (Column 2, Lines 34-50; Column 5, Lines 59-68; Column 8, Lines 59-65).

Regarding Claim 94 neither Brock nor Davis expressly teach transferring responses responsive to provided requirements on the number or profile of the respondents to receive answers as claimed.

Martino et al. teach a system and method further comprising transferring responses responsive to a provided requirement on the number *or* profile of the respondents to receive answers (Column 21, Lines 27-49; Abstract).

12. Claims 91-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock U.S. Patent No. 7,181,696 in view of Davis, U.S. Patent No. 6,256,663 as applied to claims 1, 19, and 46 above, and further in view of Li et al., Mining from open answers in question data (2001).

Regarding Claim 91 neither Brock nor Davis expressly teach grouping similar answers together or stating the percentage for each answer as claimed.

Li et al. teach a system and method wherein the report further comprises grouping similar answers together and stating for each answer the percentage of respondents providing the answer (Column 2, Paragraph 4, Page 444; Table 6, Figure 3).

It would have been obvious to one skilled in the art at the time of the invention that the survey system and method as taught by the combination of Brock and Davis would have benefited from grouping similar answers and stating the percentage of each in view of the teachings of Li et al., since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 92 while Davis teaches analyzing answers (see claim 14) neither Brock nor Davis expressly teach utilizing text mining methods as claimed.

Li et al. teach using text mining methods to analyze the answers (Abstract; Figure 1, Tables 2-4, 6).

Regarding Claim 93 neither Brock nor Davis teach stating dominant words as claimed.

Li et al. teach a system and method wherein the (summary) report comprises stating for dominant words a number of answers including the words (Figure 1, Tables 2-4, 6).

13. Claims 97-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock U.S. Patent No. 7,181,696 in view of Davis, U.S. Patent No. 6,256,663 as applied to claims 1, 19, and 46 above, and further in view of Nanos et al., U.S. Patent No. 6,381,744.

Regarding Claim 97 while Brock and Davis teach changing (adjusting) the progression of a survey session neither expressly teach adjusting the survey progression comprises changing a *preplanned* survey plan as claimed.

Nanos et al. teach adjusting the survey progression comprises changing a preplanned survey plan (Abstract; Column 10, Lines 1-22; Column 11, Lines 31-40, 60-64; Figure 5) in an analogous art of conducting surveys.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for conducting a survey session as taught by the combination of Brock and Davis would have benefited from adjusting the survey progression comprises changing a *preplanned* survey plan in view of the teachings of Nanos et al., since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.



Regarding Claim 98 neither Brock nor Davis expressly teach changing a preplanned survey, as discussed above.

Nanos et al. teach changing a preplanned survey wherein changing a preplanned survey comprises skipping at one question in a question order of the preplanned survey plan (Column 8, Lines 45-54; Column 9, Lines 65-68; Column 10, Lines 1-15).

Regarding Claim 99 neither Brock nor Davis expressly teach changing a preplanned survey, as discussed above.

Nanos et al. teach a system and method wherein changing a preplanned survey plan comprises adjusting at least one question in a question roster (list, chart, spreadsheet, etc.; Abstract; Column 8, Lines 58-68; Figure 5; Column 10, Lines 10-22)).

14. Claims 1, 9, 14-16, 19, 23, 46, 47, 49-51, 70-72, 88-90, 95, 96, 100 and 113-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock U.S. Patent No. 7,181,696 in view of NetOnCourse, Inc. – MI-Live product (system/method) as evidenced by at least the following reference: NetOnCourse, Inc. MI-Live - Take the Pulse of Your Market - Product Overview, September 2001, herein after reference A.

Regarding Claims 1, 19 and 46 Brock teaches a system and method of conducting a survey session comprising:

- providing a plurality of questions to respondents, at least some questions being provided to a plurality of respondents (Column 3, lines 10-58; Figure 1, Elements 10a-10h);
- collecting answers to the questions from the respondents (Column 4, Lines 11-37; Column 5, Lines 6-53; Column 13, lines 15-43; Figure 6);
- collecting responses to the transferred questions, at least some of the responses be qualitative (Column 4, Lines 11-37; Column 5, Lines 6-53; Column 13, lines 15-43; Figure 6);
- transferring at least some of the answers to users other than those who generated the answers (Column 14, Lines 22-28; Figure 15);
- providing a (summary) report at least partially based on qualitative responses or answers collected from the respondents (Column 3, Lines 39-68; Column 4, Lines 49-56; Column 5, Lines 55-68; Column 9, Lines 1-7; Figures 9, 13, 14, 18);

- adjusting the progression (flow, questions, timing, answers, direction, path, route, respondents, etc.) of the survey session response to the (summary) report provided, during the survey session (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Brock further teaches Regarding generating wording for at least one question responsive to the answers received from the respondents (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Brock does not expressly teach transferring (providing, savings, displaying, sharing, publishing, etc.) at least some of the answers to respondents other than those who generated the answers, during the survey session as claimed.

NetOnCourse teaches transferring at least some of the answers to respondent stations other than those who generated the answers during the survey session (reference A: Number 3, Page 7 – “The respondent may also choose to respond by agreeing with someone else’s answer.”; reference B: Page 3; Bullets 3-4, Page 7), in an analogous art of computerized survey systems.

More generally NetOnCourse teaches an online computerized survey system and method comprising:

- providing a plurality of questions to respondent stations (browsers), at least some of the questions being provided to a plurality of respondent stations, wherein at

least one of the plurality of questions is an open question (reference A: Title, Bullet 4, Page 2; Top Left Bullet, First Bullet, Page 4; Bullet 2, Page 5; Bullet 3, Page 9; Page 10; reference B: Pages 6-7);

Collecting answers to the questions from the respondent stations (reference A: Numbers 2, 3, Page 7; Pages 10, 11; Bullet 3, Page 5; MI-Live Dashboard, Page 8; Bullets 5-8, Page 9; Page 10 – Vote, Sample Columns; Page 11; reference B: Page 6, Bullets 1-4, Page 7);

- transferring (sharing) at least some of the answers to respondent stations of respondents other than those who generated the answers, during the survey (e.g. enabling respondents to respond/provide feedback on other respondents questions; sharing) answers amongst participants (reference A: Number 3, Page 7 – “The respondent may also choose to respond by agreeing with someone else’s answer.”; reference B: Page 3; Bullets3-4, Page 7);

- collecting from the respondent stations responses to the transferred answers, at least some of the responses being qualitative (reference A: Number 3, Page 7; reference B: Page 3; Bullets3-4, Page 7);

- generating a summary report in the computerized survey system which is at least partially based on qualitative responses OR answers collected from the respondent stations (reference A: Bullet 3, Page 5; MI-Live Dashboard, Page 8; Bullets 5-8, Page 9; Page 10 – Vote, Sample Columns; Page 11; reference B: MI-Live Dashboard Page 4); and

- adjusting progression of the survey session by the computerized survey system responsive to the generated summary (report) during the survey session (dynamic, real-time; reference A: Page 2, First & Last Bullets; Number 4, Page 6) the adjusting comprising adjusting at least one question responsive to the qualitative responses or answers (reference A: Bullet 7, Page 9 – “Generate dynamic surveys and modify them on the fly!”; Bullets 2, 7, Page 12)..

It would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by Brock would have benefited from transferring (providing, savings, displaying, sharing, publishing, etc.) at least some of the answers to respondents other than those who generated the answers, during the survey session in view of the teachings of NetOncourse, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Regarding Claim 9 Brock does not expressly teach transferring answers to respondents as discussed above.

NetOncourse teaches a system and method wherein at least one of the questions provided is after transferring at least some of the answers to respondents other than those who generated the answers (reference A: Number 3, Page 7 – “The

respondent may also choose to respond by agreeing with someone else's answer.";  
reference B: Page 3; Bullets 3-4, Page 7).

Regarding Claim 14 Brock teaches a system and method wherein at least one of the provided questions is generated responsive to statistics (data, metrics, etc.) on the answers collected from a plurality of respondents (Column 5, Lines 55-68; Column 13, lines 20-40; Figures 13-16).

Regarding Claim 15 Brock teaches a system and method wherein at least one question is generated (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Brock does not expressly teach that one of the questions is generated automatically.

It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, In re Venner , 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of generating a question gives you just what you would expect from the manual step as shown in Brock. In other words there is no enhancement found in the claimed step. The claimed automated step only provides automating the manual activity. The end result is the same as compared

to the manual method. A computer can simply iterate the steps faster. The result is the same.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the generation of at least one question because this would speed up the process of matching policies with customers, which is purely known, and an expected result from automation of what is known in the art.

Regarding Claim 16 Brock does not expressly teach transferring answers to respondents as discussed above.

NetOncourse teaches a system and method wherein transferring the answers comprises transferring answers from at least one of the respondents to a group of respondents which changes during the survey for different answers of the respondents (reference A: Number 3, Page 7 – “The respondent may also choose to respond by agreeing with someone else’s answer.”; reference B: Page 3; Bullets 3-4, Page 7).

Regarding Claim 23 Brock teaches a system and method wherein at least some of the provided questions are closed questions (Figure 11, Element 128; Figure 2, Element 360; Figure 12, Element 258).

Regarding Claim 47 Brock teaches a system and method further comprising selecting from a plurality of answers given to an open question (Figure 12, Element 260, Figure 11, Element 250) (several answers to be used in a closed version of the open question – merely recites the intended use of the answers).

Regarding Claim 49 Brock teaches a system and method wherein the system generates at least one open question (Figure 12, Element 260, Figure 11, Element 25; Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Regarding Claim 50 Brock teaches does not expressly teach a system and method wherein the at least one question asks for the reason of a statistical distribution of answers to one or more questions.

Brock does not expressly teach the specific data (question) recited in claim 50 (at least one question asks for the reason of a statistical distribution of answers to one or more questions); however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d



*1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.*

Regarding Claim 51 Brock teaches a system and method further comprising generating at least one question during the same survey session in which the answers used in generating the question were received (Column 4, lines 49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Regarding Claims 70 and 72 Brock teaches a system and method further comprising:

- providing during a survey session, a first question to a first group of a plurality of respondents (Column 3, lines 10-58; Column4, Lines 11-37; Column 5, lines 6-53);
- statistically (mathematically) analyzing the collected answers to the first question (Column 5, lines 55-68; Column 13, lines 20-40; Figures 13-16);
- providing, during the survey session, a second a question to a plurality of respondents (Column 3, lines 10-58; Column4, Lines 11-37; Column 5, lines 6-53);
- collecting and (statistical) tabulating the answers to the second questions Column 5, lines 55-68; Column 13, lines 20-40; Figures 13-16).

Brock does not expressly teach the specific data (question) recited in claim 70 (a question on the reasons to a statistical distribution of the collected answers to the first question); however, these differences are only found in the non-functional descriptive

material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 71 Brock teaches a system and method wherein the second question comprises an open question (Figure 12, Element 260; Figure 11, Element 250).

Regarding Claim 88 Brock teaches system and method wherein the (summary) report is provided in real-time (Column 5, lines 55-65; Column 3, lines 58-65; Figure 13).

Regarding Claim 89 Brock teaches a system and method wherein the (summary) report comprises a statistical report (Column 5, Lines 55-68; Column 13, lines 20-40; Figures 13-16).

Regarding Claim 90 Brock teaches a system and method further comprising displaying the (summary) report to a moderator of the survey, during the survey session (Column 5, lines 55-65; Column 3, lines 58-65; Figure 13).

Regarding Claim 95 Brock does not expressly teach transferring respondent answers, as discussed above.

NetOncourse teaches transferring respondent answers, as discussed above. NetOnCourse further teaches determining the timing of the various responses (Page 8, Time Column; Page 11, Time Column)

Official notice is taken that a delay, although potentially small, is inherent in any transferring (publishing, forwarding, displaying, etc.) wherein it is nearly impossible to simultaneously receive and answer and display it without some delay.

Further it is noted that whether or not there is a delay merely represents non-functional descriptive material wherein the method steps remain the same regardless of a delay or lack thereof in transferring respondent answers.

It would have been obvious to one skilled in the art at the time of the invention that the survey system and method as taught by the combination of Brock and Davis would have inherently had a delay in transferring at least one answer in view of the teachings of official notice.

Regarding Claims 96 and 100 Brock teaches a system and method wherein adjusting the survey progression further comprises using the (summary) report to generate or modify one or more questions provided to the respondents (Column 4, lines

49-56; Column 6, Lines 1-4; Column 13, Lines 4-10, 44-57; Column 16, Lines 24-29; Figure 12).

Regarding Claims 113 and 114 Brock and Davis are silent on the specific size limitations/constraints of the survey system however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 115 Brock teaches a system and method wherein the survey comprises a focus group (Abstract; Column 2, Lines 24).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **SCOTT L. JARRETT** whose telephone number is (571)272-7033. The examiner can normally be reached on **Monday-Friday, 8:00AM - 5:00PM**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571.272.6782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott L Jarrett/  
Primary Examiner, Art Unit 3624